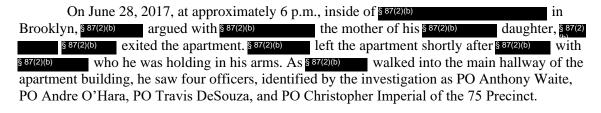
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	V	Force		Discourt.	U.S.
Maura Roche		Squad #4	201706523	$\overline{\mathbf{Q}}$	Abuse		O.L.	✓ Injury
Incident Date(s)		Location of Incident:		D	recinct:	18	Mo. SOL	EO SOL
, ,		Location of incident.		[
Wednesday, 06/28/2017 6:00 PM				L	75		/28/2018	12/28/2018
Date/Time CV Reported		CV Reported At:	How CV Reported	:	Date/Time	Rece	ived at CCI	RB
Thu, 08/03/2017 11:37 AM		IAB	Phone		Wed, 08/0	9/201	7 2:44 PM	
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Anthony Waite	09649	961434	075 PCT					
2. POM Andre Ohara	09483	961031	075 PCT					
3. POM Christophe Imperial	12617	956756	075 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Travis Desouza	09221	950317	075 PCT					
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nmendation
A.POM Anthony Waite	Abuse: P	olice Officer Anthony V	Waite stopped § 87(2)(b)				
D DOM A 1 OI	A1	1' 00' 4 1 0'	1 8 87/2\/b)					
B.POM Andre Ohara	Abuse: Police Officer Andre O'Hara stopped § 87(2)(b)							
C.POM Anthony Waite	Force: Police Officer Anthony Waite used physical force against §87(2)(b)							
§ 87(4-b), § 87(2)(g)								

Case Summary

On August 3, 2017, §87(2)(b) filed this complaint with IAB by phone. It was received at the CCRB on August 9, 2017.



PO Waite and PO O'Hara approached (\$87(2)(0)) and told him that (\$87(2)(0)) was accusing him of assaulting her (**Allegations A and B**). PO O'Hara took (\$87(2)(0)) out of (\$87(2)(0)) arms. PO Waite grabbed (\$87(2)(0)) by the left arm, took him to the floor, and placed him into handcuffs (**Allegation C**). (\$87(2)(0)) sustained a four inch by four inch bruise to his upper thigh from landing on the ground, but did not seek medical treatment.

PO O'Hara and PO DeSouza spoke with \$87(2)(0) who recanted her allegations that \$100 hit her and pushed her down the stairs. \$87(2)(0) was released. No summonses were issued or arrests made. PO Waite completed a Domestic Incident Report in regards to this incident (BR 01).

§ 87(4-b), § 87(2)(g)

There is no video footage of this incident.

Mediation, Civil and Criminal Histories

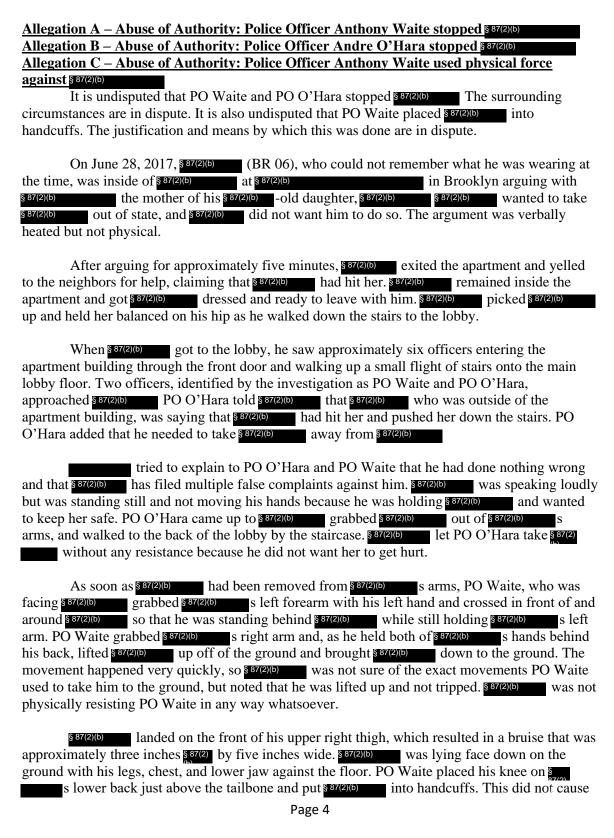
- § 87(2)(b) declined to mediate this case.
- As of September 29, 2017, no Notice of Claim has been filed regarding this incident (BR 02).
- § 87(2)(b)

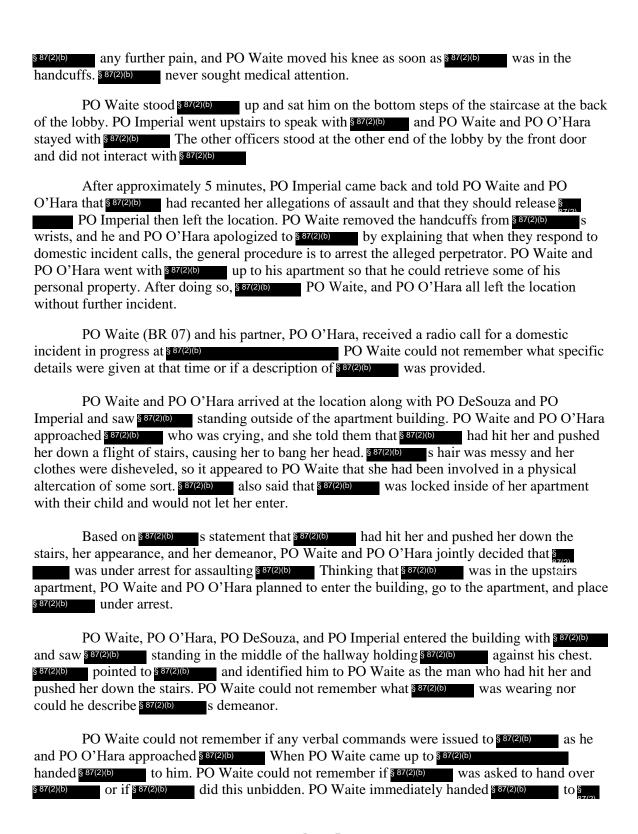
Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by \$87(2)(b) (BR 04).
- PO Waite has been a member of the NYPD for one year. There are two prior allegations against him stemming from one complaint, neither of which was substantiated. There are seven allegations stemming from one complaint currently being investigated by the CCRB. \$37(2)(9)
- PO O'Hara has been a member of the NYPD for one year. This is the first complaint against PO O'Hara. There are two allegations stemming from one complaint currently being investigated by the CCRB.
- PO DeSouza has been a member of the NYPD for six years. This is the first complaint against PO DeSouza.

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	Detential Issues
•	(BR 06) thought that the people living in \$\frac{87(2)(0)}{2}\$ in Brooklyn might have witnessed the incident. On August 30, 2017, field work was done at the location, and all four apartments on the first floor were visited. Residents in apartments \$\frac{87(2)(0)}{2}\$ confirmed that they did not witness the incident. A please call letter and business card were left under the door of apartment however, no one from this apartment subsequently contacted the CCRB. The resident in apartment \$\frac{87(2)(0)}{2}\$ stated that she had witnessed the incident but that she would not provide a statement unless \$\frac{87(2)(0)}{2}\$ gave her permission to do so. The CCRB's contact information was left with \$\frac{87(2)(0)}{2}\$ Between September 1, 2017, and September 14, 2017, five calls were placed to the number \$\frac{87(2)(0)}{2}\$ provided to the field investigator, all of which rang with no answer, and no messages could be left. During that same time period, two letters were sent to \$\frac{87(2)(0)}{2}\$ none of which was returned as undeliverable. As such, no witness statements were obtained. On August 15, 2017, the management company for \$\frac{87(2)(0)}{2}\$ confirmed that the video cameras at the location were not functioning at the time of the incident. As such, no video was obtained in regards to this incident.
	Findings and Recommendations
Allegat	tions not pleaded
•	Discourtesy – In his initial phone statement to intake (BR 05), \$37(2)(b) alleged that an officer told him, "A lot of guys get locked up for domestic on stupid shit." did not repeat this allegation during his sworn CCRB statement. As such, a corresponding allegation has not been pled.
•	Property Damage – sazezo alleged that his phone, which was in his front pants pocket, broke when PO Waite took him to the ground. Because the damaged occurred as a direct result of the alleged force, it has been subsumed under Allegation C.
•	§ 87(4-b), § 87(2)(g)
•	§ 87(4-b), § 87(2)(g)





and PO O'Hara then walked to the back of the lobby and started walking up a staircase to her apartment. PO Waite was standing in front of §87(2)(b) and began to question him about what had happened between him and \$87(2)(b) PO DeSouza and PO Imperial were behind PO Waite and to his left, closer to the front door of the building. §87(2)(b) would not make eye contact, was stuttering, and could not speak clearly in reply to the questions that PO Waite was asking. without warning, ran approximately five feet forward past PO Waite and directly into PO DeSouza and PO Imperial. PO Waite turned around and grabbed \$87(2)(6) Either PO DeSouza or PO Imperial also grabbed \$37(2)(b) PO Waite could not remember what part of \$87(2)(b) s body he and the other officer grabbed. As \$87(2)(b) tried to run towards the door, he fell towards the ground because his forward momentum was abruptly halted when PO Waite and PO DeSouza or PO Imperial grabbed him. \$87(2)(b) landed on his side. PO Waite went to the ground with \$87(2)(b) and was able to get one of \$87(2)(b) and s hands into the handcuffs with the assistance of either PO DeSouza or PO Imperial. §87(2)(6) tensed his arms and would not let the officers place his other hand into the handcuffs. §87(2)(b) did not resist in any other way. PO Waite could not remember if any verbal commands were issued to \$87(2)(b) at this time. PO Waite lifted \$87(2)(b) up off of the floor and stood him up against the wall. PO Waite could not remember if another officer helped him do this or how specifically he lifted up. PO Waite, PO DeSouza, PO Imperial, and PO O'Hara, who had come down the stairs when he heard the commotion of \$87(2)(b) trying to run, were able to all collectively get s other hand into the handcuff. PO Waite sat § 37(2)(b) down on the staircase at the back of the lobby and tried to calm who was still stuttering and refusing to make eye contact. PO Waite and PO Imperial stayed with \$87(2)(b) while PO O'Hara and PO DeSouza went upstairs to speak with \$87(2)(b) While PO Waite was standing with \$87(2)(6) did not complain of any injuries or pain. After a few minutes, an officer – PO Waite could not remember who – came downstairs and told him that § 37(2)(b) had changed her story and that PO Waite should follow up with her. PO Waite went upstairs to speak with \$87(2)(b) who was in her apartment with PO O'Hara. told PO Waite that she did not want to press charges against §87(2)(b) and only wanted him to leave the location. § 87(2)(b) recanted her allegation that § 87(2)(b) had pushed her down the stairs. Because \$87(2)(b) was no longer claiming that \$87(2)(b) had assaulted her, PO Waite decided that §87(2)(b) was no longer under arrest. PO Waite filled out a Domestic Incident Report (BR 01) in the apartment and then went downstairs to explain the situation to \$87(2)(b) said that he understood the situation and asked if he could get some things from his apartment. PO Waite went back upstairs to see if would allow § 87(2)(b) into the apartment for the purposes of getting his belongings. agreed and PO Waite and PO O'Hara escorted \$87(2)(b) who had been released from his handcuffs, up to the apartment where he gathered a few items. §87(2)(b) then left the location without further incident. Page 6

PO DeSouza heard a radio call for an assault in progress and noted that PO Waite and PO O'Hara were responding. PO DeSouza and PO Imperial decided to respond as well to provide backup. When they arrived, PO Waite and PO O'Hara were already inside the apartment building. was standing outside of the building and waved PO DeSouza and PO Imperial over to her. She did not appear injured but was waving her hands around and speaking in a high-pitched tone of voice.

PO DeSouza, PO Imperial, and walked into the apartment building together, and PO DeSouza saw standing approximately 15 feet away in the center of the lobby speaking with PO Waite and PO O'Hara. PO DeSouza did not see a child anywhere.

made a few quick steps away from PO Waite and PO O'Hara and then ran directly into PO DeSouza. PO DeSouza raised his hands up to chest level, and \$\frac{8}{27(2)(0)}\$ ran into PO DeSouza such that PO DeSouza's hands were pressed flat against \$\frac{87(2)(0)}{27(2)}\$ supper chest area. PO Waite and PO O'Hara, who were behind \$\frac{8}{27(2)(0)}\$ were able to get hold of \$\frac{8}{27(2)}\$ shands and held them behind \$\frac{8}{27(2)(0)}\$ sback. Either PO Waite or PO O'Hara placed into handcuffs while \$\frac{8}{27(2)(0)}\$ was standing up. \$\frac{8}{27(2)(0)}\$ did not fall to the ground. \$\frac{8}{27(2)(0)}\$ was placed into handcuffs because \$\frac{8}{27(2)(0)}\$ had identified him as the person who had assaulted her and it was necessary for officers to conduct a further investigation into the situation.

was panting and sweating but did not appear to be injured. PO DeSouza could not hear what was

being said between §87(2)(b) PO Waite, and PO O'Hara.

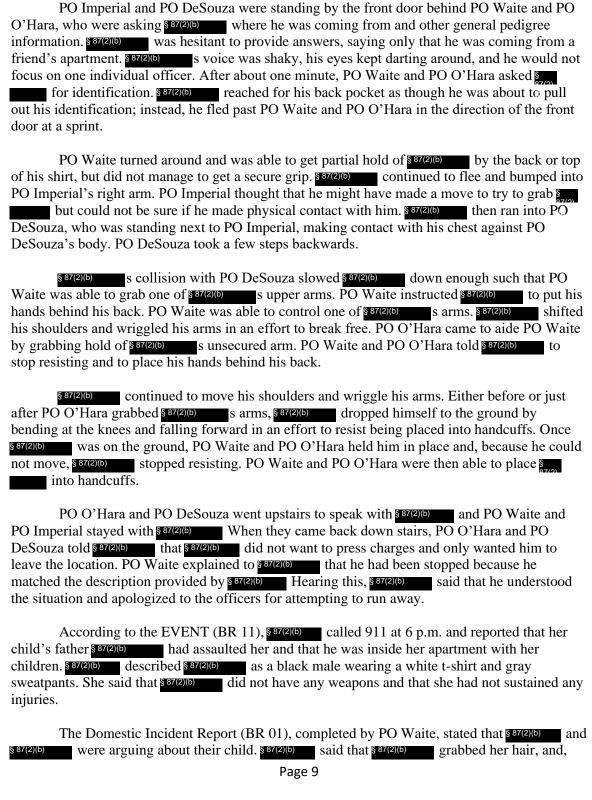
PO DeSouza and PO Imperial went upstairs to speak with \$87(2)(b) who stated that she did not want to press charges against \$87(2)(b) PO DeSouza relayed this information to PO Waite, and \$87(2)(b) was released.

§ 87(2)(g)

PO Imperial could not be certain of the details of the radio call. When PO Imperial and PO DeSouza arrived at the location, PO Waite and PO O'Hara were walking up to the front door of the building. PO Waite and PO O'Hara waited at the front door for PO Imperial and PO DeSouza to reach them. PO Imperial never saw [887(2)(8)] at the location.

was walking down the staircase when the officers walked in. \$87(2)(b) did not have a child with him. When \$87(2)(b) first saw the officers, he moved to the right side of the hallway and walked as close to the wall as possible, quickening his pace. PO Waite and PO O'Hara stopped \$87(2)(b) PO Imperial could not remember what they said to make \$87(2)(b) stop but indicated that it was along the lines of, "Stop," or, "Don't move." At first \$87(2)(b) ignored the verbal commands, but PO Imperial thought that it was possible that \$87(2)(b) did not hear the first instruction. PO Waite and PO O'Hara repeated their verbal commands, and \$87(2)(c) then stopped.

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while she was trying to get away from \$87(2)(b) she fell down the stairs. \$87(2)(b) had no visible injuries, no pain, and refused medical attention. \$87(2)(b) left the location after speaking with the police.

New York State Criminal Procedure Law section 120.00 (BR 13) states that a person is guilty of assault when, with intent to cause physical injury to another person, he causes such injury to such person or to a third person, or he recklessly causes physical injury to another person, or, with criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

In <u>People v. Harris</u>, 175 A.D.2d 713 (1991) (BR 15) the court held that an officer had reasonable suspicion to stop and detain an individual based on an eyewitness description of the individual and the officer's observations of the individual.

<u>Patrol Guide</u> Procedure 212-11 (BR 17) states that a stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. The police officer may ask questions and detain the person while an expeditious investigation is conducted to determine if there is probable cause to arrest the person.

Patrol Guide Procedure 221-01 (BR 20) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all \$\frac{\\$87(2)(0)}{\\$27(2)(0)}\$ accused \$\frac{\\$87(2)(0)}{\\$27(2)(0)}\$ of physical assault in her call to 911 and provided a description of him to the operator, information which was received via radio by PO Waite, PO O'Hara, PO DeSouza, and PO Imperial prior to their arrival at the location. \$\frac{\\$37(2)(0)}{\\$37(2)(0)}\$ alleged that PO Waite took him to the ground without any physical provocation on his part. According to PO Waite's testimony, he took \$\frac{\\$37(2)(0)}{\\$37(2)(0)}\$ down to the ground because \$\frac{\\$37(2)(0)}{\\$37(2)(0)}\$ tried to flee the location. \$\frac{\\$37(2)(0)}{\\$37(2)(0)}\$

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§ 87(4-b), § 87(2)(g)			
Squad: 4			
Investigator: _	Signature	- Print	
Squad Leader: _		Print	
Reviewer:	Title/Signature		Date
	Title/Signature	Print	Date